

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
STUDY TO VERIFY THAT A JURISDICTIONAL EMERGENCY EXISTS
RURAL WHITEFISH INTERIM ZONING DISTRICT
JULY 08, 2015**

A study by Flathead County to verify that an emergency exists, impacting the safety and general welfare of Flathead County citizens in the rural area around the City of Whitefish. Pursuant to 76-2-206(1)(b) M.C.A., this study was initiated on September 22, 2014 within 30 days of adoption of the “Rural Whitefish Interim Zoning District” interim zoning resolution. Pursuant to 76-2-206(4)(a) M.C.A., this study has been completed prior to a Flathead County Commissioner’s public hearing on extending the interim zoning resolution.

Documents pertaining to the “Rural Whitefish Interim Zoning District” are available for public inspection in the Flathead County Planning and Zoning Office located in the Earl Bennett Building at 1035 First Avenue West, in Kalispell.

I. GENERAL INFORMATION

A. Background

On February 01, 2005, the City of Whitefish and Flathead County entered into an Interlocal Agreement pursuant to 7-11-101, et seq. M.C.A. in which Flathead County granted to the City of Whitefish jurisdiction to administer all planning and zoning, subdivision review, lakeshore protection regulations, and floodplain regulations in a rural extraterritorial area (ETA). Prior to the 2005 Interlocal Agreement, pursuant to municipal zoning laws found in 76-2-310 M.C.A., some areas immediately outside Whitefish city limits had been zoned by Whitefish with a “W” zoning classification (such as WSR, WER, or WR-1). Other rural areas beyond those zoned by Whitefish with “W” zones were zoned by Flathead County with county zoning classifications (such as SAG-10, SAG-5 or R-1). Still other areas were unzoned. When the 2005 Interlocal Agreement was signed, the City of Whitefish continued their own “W” zones, adopted and administered Flathead County’s zoning classifications, and zoned most of the unzoned areas (predominantly with an agricultural “WA” zoning classification). In 2007, the City of Whitefish adopted a Growth Policy covering both the city and the ETA. This plan, the assorted “W” zoning classifications and the former county zoning classifications were used for planning and zoning by the City of Whitefish until July of 2014.

On July 15, 2014 a Montana Supreme Court ruling effectively returned control of the ETA to Flathead County. Due to a lack of advance knowledge of exactly how the Montana Supreme Court would rule and previous interest expressed by the City of Whitefish in ensuring orderly growth outside city limits regardless of jurisdiction, Flathead County had anticipated that when a ruling was issued (if there was a need for a transition of jurisdiction in the ETA) a cooperative and deliberate process would follow. Flathead County was therefore not fully prepared when the City of Whitefish immediately ceased exercising jurisdiction over the former ETA. Recognizing that a “vacuum of governance” existed in the former ETA, the Flathead County Commissioners informed the City of Whitefish in a letter dated August 06, 2014 that the county therefore had “no option but to begin administering immediate control

over the ETA.” Therefore, Flathead County began administering the area within the former ETA on August 06, 2014.

Flathead County was able to immediately administer zoning in the areas that Whitefish had left zoned with pre-2005 county zoning classifications. However, Flathead County was unable to administer or enforce the 15 separate “W” zoning classifications used by Whitefish in the former ETA. This created a situation in which landowners in the former ETA that had been zoned by Whitefish with a “W” zoning classification were unable to determine the zoning on their property. From setbacks and building height restrictions to permitted principal and accessory land uses and minimum lot sizes, there was confusion among rural Whitefish landowners. The Flathead County Commissioners were aware that this confusion over jurisdiction could impact such things as real estate sales, residential and commercial development plans, family estate planning, status or validity of land use entitlements, pending or recently completed zoning amendments or private construction schedules. Therefore, immediately after signing the August 06, 2014 letter to Whitefish, the Commissioners instructed planning staff to prepare maps and necessary text for emergency interim zoning in the areas around Whitefish that had previously been zoned with a “W” zoning classification.

On August 21, 2014 the Flathead County Commissioners authorized the publication of a Notice of Public Hearing for a hearing to be held September 02, 2014. The notice contained the requirements of 76-2-206(3)(a) M.C.A. and appeared in the August 24 and August 31, 2014 editions of the Daily Interlake. On September 02, 2014 the Flathead County Commissioners held a public hearing on the proposed interim zoning district. A record of public comments is contained in the Commissioner’s minutes of September 02, 2014. After closing the public comment period, the Commissioners continued consideration of the interim zoning district to September 09, 2014 to allow for additional consideration of public comment. On September 09, 2014 the Flathead County Commissioners passed Resolution #2394 adopting the “Rural Whitefish Interim Zoning District” (RWIZD) for a period of one (1) year effective immediately.

Pursuant to 76-2-206(1)(b) M.C.A., on September 18, 2014 at 9:30 a.m. the Planning Director met with the Flathead County Commissioners to discuss the course of action during the term of the interim zoning district to mitigate the emergency in the former ETA. Documentation of the discussion with, and guidance provided by the Flathead County Commissioners on September 18, 2014 as well as planning staff’s documentation of public inquiries after the Supreme Court ruling of July 15, 2014 constitutes the initiation of this study pursuant to 76-2-206(1)(b) M.C.A.

B. Interim Zoning District Location:

Pursuant to Resolution #2394 adopted by the Flathead County Commissioners September 09, 2014 the boundaries of the “Rural Whitefish Interim Zoning District” (RWIZD) are those areas within approximately one mile from the Whitefish city limits, excluding areas already zoned with County zoning. Whitefish city limits, the

boundaries and zoning classifications of the RWIZD, the areas of the ETA Whitefish left zoned with Flathead County zoning classifications that are therefore not a part of the RWIZD, and the boundary of the former ETA are all shown for reference in a map attached to this study (Attachment A).

C. Character and Extent of Interim Zoning

The RWIZD replaced the City of Whitefish “W” zoning classifications with similar classifications from the Flathead County Zoning Regulations and created two new zoning classifications to replace City of Whitefish “W” zoning classifications that had no similar classification in the Flathead County Zoning Regulations. 11 county zoning classifications are used to replace 15 former City of Whitefish “W” zoning classifications. The Flathead County zoning classifications used in the RWIZD are SAG-10 (Suburban Agricultural), R-1 (Suburban Residential), R-2 (One Family Limited Residential), R-3 (One Family Residential), R-4 (Two-Family Residential), R-2.5 (Rural Residential), B-2 (General Business), BR-4 (Resort Business), and I-2 (Heavy Industrial). During the effective period of the interim zoning district, special RR-1 (Resort Residential) and BSD (Business Service District) zoning classifications were adopted as part of the interim zoning district to replace the City of Whitefish’s WRR-1 and WBSD zoning classifications. The special classifications are subject to all chapters of the Flathead County Zoning Regulations.

II. STUDY OF PROPOSED INTERIM ZONING DISTRICT

A. A Study or Investigation to Verify That an Emergency Exists Based on Statutory Criteria (76-2-206 M.C.A.)

i) Circumstances that Constitute the Emergency;

Section I.A. of this study provides a brief history of the Interlocal Agreement between Flathead County and the City of Whitefish. Litigation over the Interlocal Agreement lasted for many years, and during that time many landowners in the ETA expressed concern that a lack of predictability of future planning and zoning jurisdiction put them in “limbo” for various personal projects and plans. During that time, however, those landowners could at least go to the City of Whitefish for day to day planning and zoning services. Soon after the Supreme Court issued their ruling on July 15, the City of Whitefish made known that they would no longer administer the former ETA. Both jurisdictions began receiving phone calls from landowners within the ETA seeking clarity on administration of rules and regulations covered by the former Interlocal Agreement.

Flathead County was also able to immediately administer the zoning classifications within the former ETA that Whitefish had left zoned with pre-2005 county zoning classifications. However, there was substantial confusion regarding zoning in those areas of the former ETA that had been zoned by Whitefish with a “W” zoning classification and that were now under Flathead County jurisdiction. Whitefish had adopted the “W” zoning classification but was not administering anything in the

former ETA, but Flathead County had not adopted any Whitefish “W” zoning classification. More than one knowledgeable party suggested that many rural areas around Whitefish were, at that point, effectively unzoned.

There are approximately 12,740 acres of land with 2,064 separate assessor numbers in the rural area around the City of Whitefish that had formerly been zoned with a “W” zoning classification.¹ Immediately after the July 15, 2014 Supreme Court ruling, the Flathead County Planning and Zoning Office began receiving inquiries from concerned landowners. Inquiries covered a variety of zoning-related topics about which there was no administrative clarity. No clear answers could be provided since there was no zoning being administered by either governing body. Actual examples of topics about which FCPZ received inquiries include:

- Realtor looking to sell a property and wanting to list zoning and zoning restrictions to inform prospective buyer (phone call, August 13, 2014)
- Setbacks for principal and accessory structures for which construction was to begin within days (phone call, August 14, 2014).
- Zoning restrictions on development of a vacation rental by owner (phone call, August 19, 2014).
- Requirements for zoning permits from either jurisdiction. (phone call, July 30, 2014.
- Options for privately initiated zoning amendments now that the land was under county jurisdiction. (phone call, August 11, 2014)
- Current applicability of minimum lot widths under zoning. (phone call, August 21, 2014)
- Status of Whitefish approved conceptual plan for a rental cabin development and compliance with zoning. (phone call, August 22, 2014)
- Impacts of jurisdiction and zoning on future annexation by Whitefish (phone call, September 02, 2014)

A lack of clarity on permitted uses, setbacks, lot configurations, applicable regulations, status of developments and other zoning matters has the potential to impact the safety and general welfare of the public. However, the public process that was desired by many parties to transparently discuss, create, consider and possibly adopt a permanent county replacement for the Whitefish “W” zoning would take time. Therefore, based on the circumstances described above the Commissioners felt that an emergency existed and instructed planning staff to create an interim zoning district for areas formerly zoned by Whitefish with “W” zoning classifications. Planning staff studied the existing “W” zoning classifications and determined the closest equivalent county zoning classification. For those “W” zoning classifications for which there was no sufficiently similar county zoning classification (WRR-1 and WBSD), the text of Whitefish’s “W” zoning classification was modified to work within Flathead County’s zoning format and included as part of the interim zoning district (Interim RR-1 and BSD).

¹ Flathead County GIS Department

A public hearing on the interim zoning district, which became known as the “Rural Whitefish Interim Zoning District,” (RWIZD) was legally noticed in the Daily Interlake on August 24th and 31st, 2014. The legal notice contained all the required elements of 76-2-206(4)(b) M.C.A. A public hearing was held September 02, 2014. The interim zoning regulations were adopted, pursuant to Resolution #2394, on September 09, 2014 and were effective immediately. After this date there remained many questions about the jurisdictional transition but county planning staff were able to provide answers to landowners with questions about jurisdiction and what land use regulations applied to their property. The next step was for the county to discuss and consider options to mitigate the emergency while the RWIZD was in place.

ii) The Potential Options for Mitigating the Emergency;

After the RWIZD was effective on September 09, 2015 the county immediately began discussing options for long term solutions. On September 18, 2014 the Planning Director met with the Commissioners to request guidance for a course of action. The Commissioners desired an open and public process, led by the Flathead County Planning Board, to generate ideas, discuss options and recommend a course of action. On October 01, 2014 the Flathead County Planning Board held a special public workshop to discuss the planning and zoning situation in the former ETA. Public comment was allowed at both the beginning and end of the workshop. Options for mitigating the emergency were discussed, and the Planning Board requested planning staff prepare a list of options, along with a brief analysis and distribute this document to both the board and the public for consideration.

A document listing planning and zoning options, entitled “Rural Whitefish Planning & Zoning Jurisdiction Transition Option Analysis Matrix” was distributed to the Planning Board at their regularly scheduled October 08, 2014 meeting. The options analysis document was posted to the FCPZ website the next day, October 09, 2014. A copy of the original options analysis document is included with this study as Attachment B. The original options analysis looked at nine long-term potential options for mitigating the planning and zoning emergency in the former ETA and provided context and explanations for each option.

On October 15, 2014 the Flathead County Planning Board held a public workshop to discuss the options presented in the options analysis document. After listening to public comment and board discussion, the Planning Board instructed staff to add an additional option to the options analysis document. A copy of the revised options analysis document is included with this study as Attachment C. In an effort to directly engage and hear opinions from landowners around Whitefish, the Planning Board instructed planning staff to schedule two public workshops at the Flathead County Fairgrounds and directly notify by mail every landowner on record within the entire boundary of the 1996 Whitefish City County Master Plan. Two public workshops were scheduled at the Flathead County Fairgrounds and on October 21, 2014 approximately 4,450 postcards were mailed to landowners. The postcard mailing list to inform landowners of the public workshops included significantly more landowners than are covered by the RWIZD or the former ETA, but the Planning

Board wished to inform all landowners that may be impacted by planning and zoning in the entire rural Whitefish area. The postcard contained information about the workshops and a link to the FPCZ website where more information and the revised options analysis document could be found.

The two public workshops were held October 29 and 30, 2014 at the Flathead County Fairgrounds. Approximately 35-40 people attended each workshop. Planning staff provided an educational presentation to those present at the meeting. The Planning Board took public comment and ended the workshops with a commitment to carefully consider all public comments. At the Planning Board's regularly scheduled November 12, 2014 meeting, the Planning Board closed public comment on the options analysis and decided to put consideration of a recommendation to the Flathead County Commissioners on the agenda for their regularly scheduled December 10, 2014 meeting. At the December 10, 2014 meeting staff distributed more public comment that had been received prior to the close of public comment and the Planning Board postponed a decision on a recommendation to a special meeting scheduled for December 17, 2014.

At the December 17, 2014 special meeting the Planning Board recommended "Option 1a-i" to the Flathead County Commissioners. This recommendation was forwarded to the Commissioners and on January 13, 2015 the Commissioners voted to send the recommendation back to the Planning Board for additional discussion and consideration. At the Planning Board's January 14, 2014 regularly scheduled meeting, the board approved a revised recommendation of "Option 1a" with additional language stating "consider replacing interim zoning with Part 2 zoning." The Planning Board also requested planning staff begin work on the recommended course of action by first preparing a report on some of the main zoning issues identified by the public during the review of options.

On February 02, 2015 the Flathead County Commissioners accepted the Planning Board's revised recommended option for transitioning planning and zoning in the former ETA.

iii) The Course of Action that the Governing Body Intends to Take, if Any, During the Term of the Interim Zoning District or Interim Regulation to Mitigate the Emergency.

The course of action that was recommended by the Planning Board on January 14, 2014 and endorsed by the Commissioners on February 02, 2015 is to repeal the 1996 Whitefish City County Master Plan (and make corresponding revisions to the 2012 Flathead County Growth Policy) and consider replacing the RWIZD with permanent "Part 2" zoning.² This course of action is being taken, in part, because much of Whitefish's former "W" zoning is an implementation of their 2007 Growth Policy that was not adopted by Flathead County. Under the laws governing the adoption of permanent "Part 2" zoning, the zoning must be in conformance with applicable plans

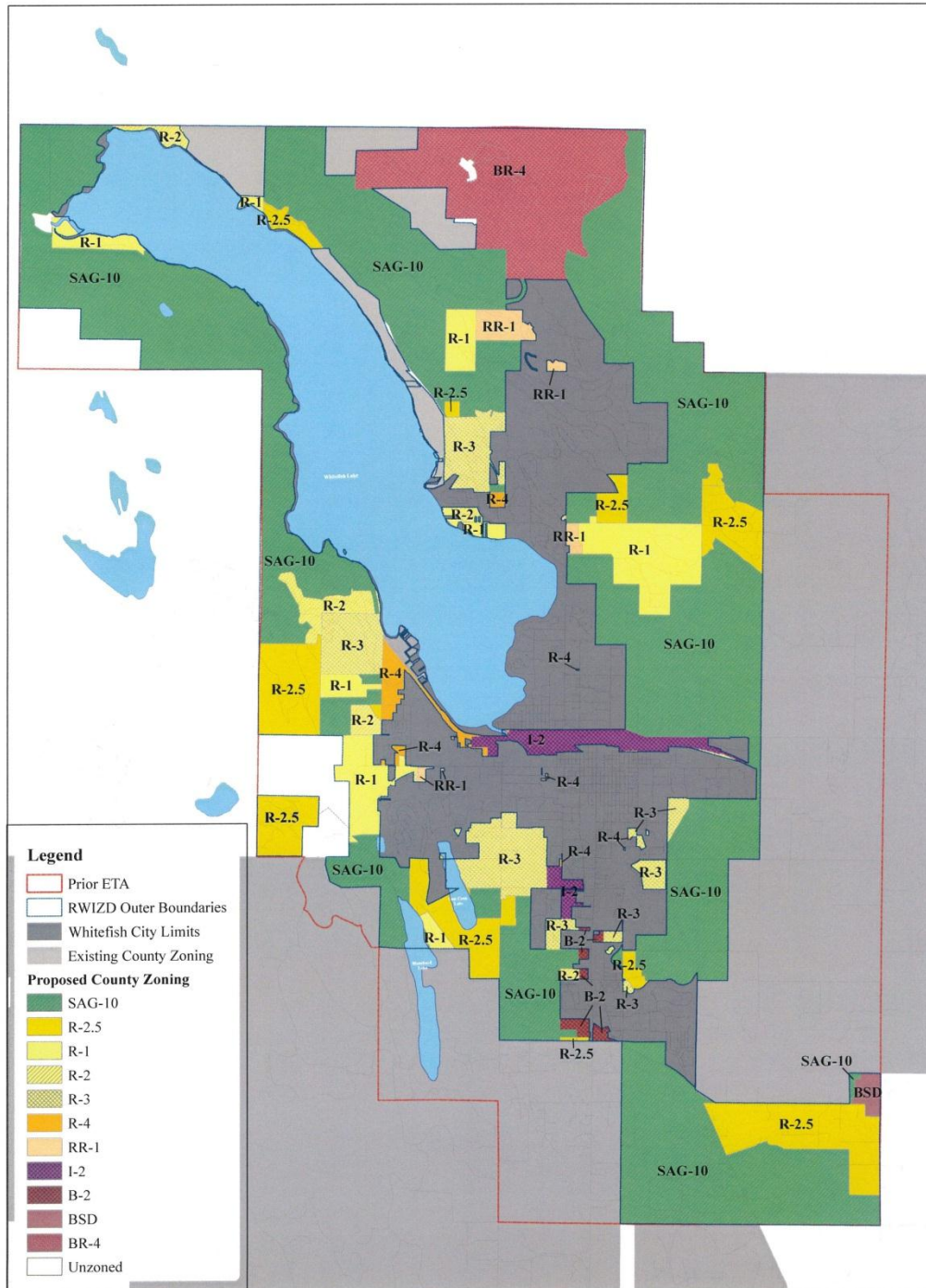
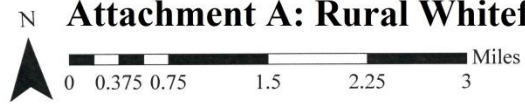
² There are three types of zoning under Title 76, Chapter 2, Montana Code Annotated, listed as Parts 1, 2, and 3. Permanent county-initiated zoning is Part 2.

but Flathead County still has the relatively outdated 1996 Whitefish City County Master Plan in place for this area. In order to minimize changes and disruption to the majority of landowners in the RWIZD, Flathead County chose to consider adopting permanent “Part 2” zoning that is similar to that which has been in place. Landowners who are seeking privately initiated amendments may then pursue those amendments by paying a fee and following the established public process. Repealing the 1996 Whitefish City County Master Plan and making some amendments to the county-wide 2012 Flathead County Growth Policy would allow the county to draft and hold public hearings on a permanent, Part 2 “Rural Whitefish Zoning District” to replace the RWIZD.

In the spring of 2015, the Planning Board held two workshops to discuss and provide guidance to county planning staff on how to proceed on this course of action. A third and final workshop was held on April 08, 2015 at which the Planning Board selected from options for minor revisions to the zoning maps in the Karrow Avenue and Houston Drive areas. At the conclusion of that workshop county planning staff was instructed to prepare necessary documents and reports and schedule public hearings. The first public hearings are on amendments to the Flathead County Growth Policy and the rescission of the 1996 Whitefish City County Master Plan and have been scheduled and legally noticed for the regularly scheduled July 08, 2015 Planning Board meeting. If these amendments receive favorable recommendations from the Planning Board, planning staff will prepare maps and text for public hearings on a new “Rural Whitefish Zoning District” and new classifications for those zoning classifications in the current RWIZD that do not currently exist in the Flathead County Zoning Regulations. The hearings on those agenda items will be scheduled and legally noticed for the regularly scheduled September 09, 2015 Planning Board meeting.

The current RWIZD expires September 09, 2015 (one year after the September 09, 2014 effective date of adoption). In light of the substantial work that has been undertaken so far on the course of action to mitigate the emergency, the public hearings that are scheduled and the need for additional time for the Commissioners to consider and act on the Planning Board’s recommendations, it is appropriate for the Flathead County Commissioners to extend the Rural Whitefish Interim Zoning District for one year, pursuant to 76-2-206(2) M.C.A.

Attachment A: Rural Whitefish Interim Zoning District



Attachment B: Rural Whitefish Planning and Zoning Transition Option Analysis Matrix (original version)

Option:	1) Take no action, allow interim zoning to expire. ²			2) During term of interim zoning, pursue planning process to update 1996 Whitefish City-County Master Plan. ³			3) During term of interim zoning, pursue planning process to update 1996 Whitefish City County Master Plan using current city-adopted 2007 Whitefish Growth Policy as starting point. ⁴		
Sub-Option:	1a) After expiration of interim zoning, repeal current county adopted 1996 Whitefish City-County Master Plan. Rely on Flathead County Growth Policy for land use decisions.	1b) After expiration of interim zoning, only administer plans and zoning adopted by Flathead County Commissioners. ⁵	1c) After expiration, allow only Part 1 zoning applications/amendments. Part 1 zoning does not require compliance with a neighborhood plan or growth policy, only description of a "development pattern" for each district. ⁶	2a) Use 1996 plan "as-is." Replace interim zoning with existing county Part 2 zoning classifications consistent with this plan. ⁷	2b) Update 1996 plan, limit scope of update to future land use map and associated text within plan. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan.	2c) Update 1996 plan, do not limit scope and create updated plan with format and content that suits rural Whitefish for 20-year planning horizon. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan.	3a) Review/adopt 2007 plan "as-is." Replace interim zoning with existing county Part 2 zoning classifications consistent with this plan.	3b) Modify 2007 plan, limit scope of update to adopting future land use map and associated text and remove portions not workable and/or desirable to rural residents. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan.	3c) Choose option 3a or 3b, then implement with new, special county Part 2 zoning classifications adopted to match permitted uses and bulk and dimensional requirements of "W" zoning in place at end of interlocal agreement.
Pros:	<ul style="list-style-type: none"> Eliminates plan and planning processes that are typical source of allegations of errors in a litigation-prone situation. Reduces long-term demand on county planning resources. 	<ul style="list-style-type: none"> Least demand on county planning resources. Those who had their property zoned by Whitefish with a "W" zoning classification and did not support the zoning would be unzoned or revert to county zoning. 	<ul style="list-style-type: none"> No updating or adoption of a broad community plan required prior to consideration of individual Part 1 districts. Landowner support would be required, 60% of landowners in an area 40 acres or more in size. 	<ul style="list-style-type: none"> Allows quickest adoption of a permanent replacement for current interim zoning using existing Part 2 zoning classifications. Uses entire 1996 plan jurisdiction. 	<ul style="list-style-type: none"> Process of updating an existing plan is clearly outlined in Part 4 of Chapter 11 of Growth Policy. Likely achievable within two-year interim zoning lifespan. Addresses planning in entire 1996 plan jurisdiction. 	<ul style="list-style-type: none"> Process of updating an existing plan is clearly outlined in Part 4 of Chapter 11 of Growth Policy. Addresses planning in entire 1996 plan jurisdiction. Optimal outcome is a plan that may serve rural Whitefish for many years. 	<ul style="list-style-type: none"> Minimizes demand on county planning resources since plan exists. Recognizes work done by community in 2007. Adopts zoning close to what was there, without "Special Provisions" of Whitefish's zoning that created controversy. 	<ul style="list-style-type: none"> Uses public process to identify and eliminate or revise controversial policies of 2007 plan. Adopts zoning close to what was there, without "Special Provisions" of Whitefish's zoning that created controversy. 	<ul style="list-style-type: none"> Provides for most consistent land use regulations with what existed under Whitefish's jurisdiction. Most compatible with adjacent municipality's urban growth and zoning, required by 76-2-203 M.C.A.
Cons:	<ul style="list-style-type: none"> Eliminates detailed guidance for future land use decision making in rural Whitefish area. 	<ul style="list-style-type: none"> Areas that were amended to a "W" zone from a county zone would go back to county zone, creating non-conforming uses. Those who supported the "W" zoning on their property and/or may have pursued zone changes, PUDs or permits under "W" zoning would now be unzoned. 	<ul style="list-style-type: none"> Significant administrative challenges associated with adding Part 1 zoning districts to existing Part 2 zoning regulations. Separate rules and standards, separate revenues and expenditures sources to track, separate planning and zoning commissions, etc., all for each district. 	<ul style="list-style-type: none"> 1996 plan is dated and doesn't reflect many existing conditions and/or current projected trends. Many current zones and/or zoning amendments adopted under Whitefish's jurisdiction may be "downzoned" to comply with this plan.⁷ 	<ul style="list-style-type: none"> Doesn't allow for full inventory of existing characteristics, projected trends, available public services and infrastructure, etc. in 2014. Plan remains somewhat dated. Requires more county planning resources (staff and Planning Board) than some other options. 	<ul style="list-style-type: none"> Achieving scope of work will require substantial county planning resources (staff and Planning Board) and a public/political will to progress quickly through process. May still not be achievable within two-year interim zoning lifespan. 	<ul style="list-style-type: none"> Many policies of 2007 plan controversial to rural landowners. Plan jurisdiction boundary not the same as 1996 plan, would need to be expanded or would create a doughnut of 1996 boundary. Current county zoning classifications are still different than Whitefish's previous "W" classifications. 	<ul style="list-style-type: none"> Plan jurisdiction boundary not the same as 1996 plan, would need to be expanded or would create a doughnut of 1996 boundary. Current county zoning classifications are still different than Whitefish's previous "W" classifications. 	<ul style="list-style-type: none"> Adopting new "special" zones into text of Flathead County Zoning Regulations takes more time in addition to plan update and zoning map adoption. "Special" zones can introduce challenges with consistency and interpretation. Ex. Ashley Lake, North Fork, etc.
Follow-up question or issue created by option:	<ul style="list-style-type: none"> Repeal of 1996 plan may not comply with Goals 46 and/or 49 of Growth Policy. 	<ul style="list-style-type: none"> Significant concerns from parties that pursued zone changes or got permits with zoning in place. 	<ul style="list-style-type: none"> Research how to administer/enforce multiple Part 1 zoning districts. 			<ul style="list-style-type: none"> What happens at end of 2 years if project is not complete? 	<ul style="list-style-type: none"> Since 2007 plan is not listed as an "existing" plan in Part 4 of Chapter 11 of Growth Policy, process to use is not as clear as using 1996 plan. 	<ul style="list-style-type: none"> Since 2007 plan is not listed as an "existing" plan in Part 4 of Chapter 11 of Growth Policy, process to use is not as clear as using 1996 plan. 	

¹The purpose of this document is to inform rural Whitefish landowners, Flathead County decision makers and the general public about some of the options that were discussed at a Planning Board public workshop on October 01, 2014 and that are currently available for planning and zoning in the rural areas outside the city of Whitefish at the end of the term of the current interim zoning. This document is intended to serve as an informational starting point for discussion, public participation and additional research. Given the unprecedented nature of the rural Whitefish area jurisdiction transition, in order to create this document and present options, some assumptions had to be made.

For those unfamiliar with planning terminology, plans referenced herein (such as the county wide Flathead County Growth Policy, the 1996 Whitefish City County Master Plan and the 2007 Whitefish Growth Policy) are non-regulatory documents that generally outline a community vision for the future, inventory existing characteristics of a community, present projected growth trends, and establish goals for how growth should occur within the plan's jurisdiction. Policies regarding such things as location of growth, public services and infrastructure to serve growth, and environmental impacts of growth are typically set forth in a plan to guide decision makers over time and help achieve the goals. Communities are not required to adopt plans, but if a community chooses to adopt plans, they must be made and adopted according to state laws. These laws are found in 76-1-601 et. seq., M.C.A. Since plans are non-regulatory, they are implemented using regulatory methods (regulatory means those for which an enforcement mechanism is authorized if violated, such as a misdemeanor) such as subdivision regulations and zoning regulations. Zoning is regulatory, and Part 2 zoning must be made in accordance with, or implement, the stated goals and policies of a plan. See footnote 6 below for an important explanation of differences between Part 1 and Part 2 zoning in rural areas.

²The current interim zoning was adopted September 09, 2014 pursuant to Resolution #2394 and will expire at the end of one year. The Commissioners may extend the interim zoning for up to one additional year. The interim zoning was adopted to most closely replicate the permitted land uses and bulk and dimensional requirements of the "W" zoning that was adopted by the Whitefish City Council outside of city limits prior to and during the period of the Interlocal Agreement.

³The 1996 Whitefish City County Master Plan was adopted jointly by the Flathead County Commissioners and Whitefish City Council on February 06, 1996 and February 20, 1996 (respectively). This is the local plan for the rural Whitefish area referenced in Part 4 of Chapter 11 of the Flathead County Growth Policy. The 1996 plan boundary extends approximately 4½ miles outside Whitefish city limits as they existed at that time.

⁴The 2007 Whitefish Growth Policy was adopted by the Whitefish City Council in November 2007 and at that time applied to areas within city limits and within the interlocal agreement boundary. The interlocal agreement boundary was *approximately* 2 miles from Whitefish city limits as they existed in 2005. This 2007 Whitefish Growth Policy was not adopted by the Flathead County Commissioners for areas outside Whitefish city limits.

⁵Under this option/scenario, the 1996 Whitefish City County Master Plan and any county zoning adopted by the Flathead County Commissioners in the past would continue to exist. Zoning in areas that had been zoned with a "W" zone by the Whitefish City Council would cease to exist. "W" zoning within one mile of city limits that was passed by the Whitefish City Council prior to 2005 pursuant to 76-2-310 M.C.A. would not exist. County zones that were adopted by the Flathead County Commissioners in the past that have been amended by the Whitefish City Council to a different county zone or to a "W" zone would revert to the last zoning approved by the Commissioners.

⁶Under Montana law, there are two basic types of zoning that can be adopted in rural areas. Part 1 zoning is referred to as "citizen initiated" zoning. When 60% of the landowners in an area of 40 acres or more petition the county for zoning, the Commissioners may adopt it. Part 1 zoning districts each have a separate "Planning and Zoning Commission," each would have separate regulatory standards, each have a separate levy within the district to pay for administration and enforcement of the zoning district, and are adopted to implement a separate "development pattern" identified for each district. Part 1 zoning is not specifically required to be made in accordance with a Growth Policy. See 76-2-101 et. seq., M.C.A. regarding details of "citizen initiated" Part 1 zoning. Currently, Flathead County only has one Part 1 zoning district in the Egan Slough area and because it has unique and separate regulatory standards and administrative requirements, it is not a part of the Flathead County Zoning Regulations. Part 2 zoning is the second type of zoning under Montana law and it is referred to as "county initiated" zoning. Part 2 zoning may be initiated by the Commissioners for purposes of "promoting the public health, safety, morals, and general welfare" of a jurisdictional area and must be made in accordance with a growth policy or plan. The current Flathead County Zoning Regulations are adopted under Part 2 zoning. See 76-2-201 et. seq., M.C.A. regarding details of "county initiated" Part 2 zoning.

⁷Pursuant to the criteria for adopting Part 2 zoning found in 76-2-203 M.C.A. and Section 2.08.040 of the Flathead County Zoning Regulations, zoning regulations must be made in accordance with the Growth Policy. The 1996 Whitefish City County Master Plan has been adopted as an element of the Flathead County Growth Policy. Therefore, any permanent zoning would have to comply with the 1996 plan and according to the Introduction, the plan is composed of two major components, the text and the map, that must be weighed equally (page 3). Since the 1996 plan was not updated by the county while the interlocal agreement was in place, some of the current zoning that was adopted by Whitefish in accordance with the 2007 Whitefish Growth Policy would not comply and could not be adopted under the current county 1996 plan.

Attachment C: Rural Whitefish Planning and Zoning Transition

Option Analysis Matrix (Planning Board revised version)

Option:	1) Take no action, allow interim zoning to expire. ²				2) During term of interim zoning, pursue planning process to update 1996 Whitefish City-County Master Plan. ³			3) During term of interim zoning, pursue planning process to update 1996 Whitefish City County Master Plan using current city-adopted 2007 Whitefish Growth Policy as starting point. ⁴		
Sub-Option:	1a) After expiration of interim zoning, repeal current county adopted 1996 Whitefish City-County Master Plan. Rely on Flathead County Growth Policy for land use decisions.	1a-i ⁱⁱ) Prior to expiration of interim zoning, repeal 1996 Whitefish City-County Master Plan then possibly amend Flathead County Growth Policy to add future land use map from 2007 Whitefish Growth Policy and revise text as needed. Replace interim zoning with county Part 2 zoning classifications based on Growth Policy.	1b) After expiration of interim zoning, only administer plans and zoning adopted by Flathead County Commissioners. ⁵	1c) After expiration, allow only Part 1 zoning applications/amendments. Part 1 zoning does not require compliance with a neighborhood plan or growth policy, only description of a "development pattern" for each district. ⁶	2a) Use 1996 plan "as-is." Replace interim zoning with existing county Part 2 zoning classifications consistent with this plan. ⁷	2b) Update 1996 plan, limit scope of update to future land use map and associated text within plan. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan.	2c) Update 1996 plan, do not limit scope and create updated plan with format and content that suits rural Whitefish for 20-year planning horizon. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan.	3a) Review/adopt 2007 plan "as-is." Replace interim zoning with existing county Part 2 zoning classifications consistent with this plan.	3b) Modify 2007 plan, limit scope of update to adopting future land use map and associated text and remove portions not workable and/or desirable to rural residents. Replace interim zoning with existing county Part 2 zoning classifications consistent with this updated plan.	3c) Choose option 3a or 3b, then implement with new, special county Part 2 zoning classifications adopted to match permitted uses and bulk and dimensional requirements of "W" zoning in place at end of interlocal agreement.
Pros:	<ul style="list-style-type: none"> Eliminates plan and planning processes that are typical source of allegations of errors in a litigation-prone situation. Reduces long-term demand on county planning resources. 	<ul style="list-style-type: none"> Allows use of Whitefish's Future Land Use Map (upon which present zoning is based) without adopting entire 2007 Whitefish Growth Policy. Avoids more time consuming plan review processes in Options 2 of 3. 	<ul style="list-style-type: none"> Least demand on county planning resources. Those who had their property zoned by Whitefish with a "W" zoning classification and did not support the zoning would be unzoned or revert to county zoning. 	<ul style="list-style-type: none"> No updating or adoption of a broad community plan required prior to consideration of individual Part 1 districts. Landowner support would be required, 60% of landowners in an area 40 acres or more in size. 	<ul style="list-style-type: none"> Allows quickest adoption of a permanent replacement for current interim zoning using existing Part 2 zoning classifications. Uses entire 1996 plan jurisdiction. 	<ul style="list-style-type: none"> Process of updating an existing plan is clearly outlined in Part 4 of Chapter 11 of Growth Policy. Likely achievable within two-year interim zoning lifespan. Addresses planning in entire 1996 plan jurisdiction. 	<ul style="list-style-type: none"> Process of updating an existing plan is clearly outlined in Part 4 of Chapter 11 of Growth Policy. Addresses planning in entire 1996 plan jurisdiction. Optimal outcome is a plan that may serve rural Whitefish for many years. 	<ul style="list-style-type: none"> Minimizes demand on county planning resources since plan exists. Recognizes work done by community in 2007. Adopts zoning close to what was there, without "Special Provisions" of Whitefish's zoning that created controversy. 	<ul style="list-style-type: none"> Uses public process to identify and eliminate or revise controversial policies of 2007 plan. Adopts zoning close to what was there, without "Special Provisions" of Whitefish's zoning that created controversy. 	<ul style="list-style-type: none"> Provides for most consistent land use regulations with what existed under Whitefish's jurisdiction. Most compatible with adjacent municipality's urban growth and zoning, required by 76-2-203 M.C.A.
Cons:	<ul style="list-style-type: none"> Eliminates detailed guidance for future land use decision making in rural Whitefish area. 	<ul style="list-style-type: none"> Permanent Part 2 zoning to replace interim zoning wouldn't be based on a separate local plan. Flathead County Growth Policy contains broad goals and policies with opportunity for debate over meaning/applicability to very specific areas. 	<ul style="list-style-type: none"> Areas that were amended to a "W" zone from a county zone would go back to county zone, creating non-conforming uses. Those who supported the "W" zoning on their property and/or may have pursued zone changes, PUDs or permits under "W" zoning would now be unzoned. 	<ul style="list-style-type: none"> Significant administrative challenges associated with adding Part 1 zoning districts to existing Part 2 zoning regulations. Separate rules and standards, separate revenues and expenditures sources to track, separate planning and zoning commissions, etc., all for each district. 	<ul style="list-style-type: none"> 1996 plan is dated and doesn't reflect many existing conditions and/or current projected trends. Many current zones and/or zoning amendments adopted under Whitefish's jurisdiction may be "downzoned" to comply with this plan.⁷ 	<ul style="list-style-type: none"> Doesn't allow for full inventory of existing characteristics, projected trends, available public services and infrastructure, etc. in 2014. Plan remains somewhat dated. Requires more county planning resources (staff and Planning Board) than some other options. 	<ul style="list-style-type: none"> Achieving scope of work will require substantial county planning resources (staff and Planning Board) and a public/political will to progress quickly through process. May still not be achievable within two-year interim zoning lifespan. 	<ul style="list-style-type: none"> Many policies of 2007 plan controversial to rural landowners. Plan jurisdiction boundary not the same as 1996 plan, would need to be expanded or would create a doughnut of 1996 boundary. Current county zoning classifications are still different than Whitefish's previous "W" classifications. 	<ul style="list-style-type: none"> Plan jurisdiction boundary not the same as 1996 plan, would need to be expanded or would create a doughnut of 1996 boundary. Current county zoning classifications are still different than Whitefish's previous "W" classifications. 	<ul style="list-style-type: none"> Adopting new "special" zones into text of Flathead County Zoning Regulations takes more time in addition to plan update and zoning map adoption. "Special" zones can introduce challenges with consistency and interpretation. Ex. Ashley Lake, North Fork, etc.
Follow-up question or issue created by option:	<ul style="list-style-type: none"> Repeal of 1996 plan may not comply with Goals 46 and/or 49 of Growth Policy. 	<ul style="list-style-type: none"> Review Growth Policy to ensure proposed amendments will retain internal consistency of document. 	<ul style="list-style-type: none"> Significant concerns from parties that pursued zone changes or got permits with zoning in place. 	<ul style="list-style-type: none"> Research how to administer/enforce multiple Part 1 zoning districts. 			<ul style="list-style-type: none"> What happens at end of 2 years if project is not complete? 	<ul style="list-style-type: none"> Since 2007 plan is not listed as an "existing" plan in Part 4 of Chapter 11 of Growth Policy, process to use is not as clear as using 1996 plan. 	<ul style="list-style-type: none"> Since 2007 plan is not listed as an "existing" plan in Part 4 of Chapter 11 of Growth Policy, process to use is not as clear as using 1996 plan. 	

¹The purpose of this document is to inform rural Whitefish landowners, Flathead County decision makers and the general public about some of the options that were discussed at Planning Board public workshops on October 01 and October 15, 2014 and that are currently available for planning and zoning in the rural areas outside the city of Whitefish at the end of the term of the current interim zoning. This analysis was originally requested by the Flathead County Planning Board at the October 01, 2014 public workshop. It was prepared by planning staff and given to the Planning Board on October 08, 2014 and posted on the planning office's website on October 09, 2014. At the October 15, 2014 public workshop, after public comment and board discussion, the board requested staff add Option 1a-i (see footnote #8 below). This additional option was added by planning staff on October 16, 2014 and the revised analysis was re-posted to the planning office's website on October 16, 2014. This document is intended to serve as an informational starting point for discussion, public participation and additional research. Given the unprecedented nature of the rural Whitefish area jurisdiction transition, in order to create this document and present options, some assumptions had to be made.

For those unfamiliar with planning terminology, plans referenced herein (such as the county wide Flathead County Growth Policy, the 1996 Whitefish City County Master Plan and the 2007 Whitefish Growth Policy) are non-regulatory documents that generally outline a community vision for the future, inventory existing characteristics of a community, present projected growth trends, and establish goals for how growth should occur within the plan's jurisdiction. Policies regarding such things as location of growth, public services and infrastructure to serve growth, and environmental impacts of growth are typically set forth in a plan to guide decision makers over time and help achieve the goals. Communities are not required to adopt plans, but if a community chooses to adopt plans, they must be made and adopted according to state laws. These laws are found in 76-1-601 et. seq., M.C.A. Since plans are non-regulatory, they are implemented using regulatory methods (regulatory means those for which an enforcement mechanism is authorized if violated, such as a misdemeanor) such as subdivision regulations and zoning regulations. Zoning is regulatory, and Part 2 zoning must be made in accordance with, or implement, the stated goals and policies of a plan. See footnote 6 below for an important explanation of differences between Part 1 and Part 2 zoning in rural areas.

²The current interim zoning was adopted September 09, 2014 pursuant to Resolution #2394 and will expire at the end of one year. The Commissioners may extend the interim zoning for up to one additional year. The interim zoning was adopted to most closely replicate the permitted land uses and bulk and dimensional requirements of the "W" zoning that was adopted by the Whitefish City Council outside of city limits prior to and during the period of the Interlocal Agreement.

³The 1996 Whitefish City County Master Plan was adopted jointly by the Flathead County Commissioners and Whitefish City Council on February 06, 1996 and February 20, 1996 (respectively). This is the local plan for the rural Whitefish area referenced in Part 4 of Chapter 11 of the Flathead County Growth Policy. The 1996 plan boundary extends approximately 4½ miles outside Whitefish city limits as they existed at that time.

⁴The 2007 Whitefish Growth Policy was adopted by the Whitefish City Council in November 2007 and at that time applied to areas within city limits and within the interlocal agreement boundary. The interlocal agreement boundary was *approximately* 2 miles from Whitefish city limits as they existed in 2005. This 2007 Whitefish Growth Policy was not adopted by the Flathead County Commissioners for areas outside Whitefish city limits.

⁵Under this option/scenario, the 1996 Whitefish City County Master Plan and any county zoning adopted by the Flathead County Commissioners in the past would continue to exist. Zoning in areas that had been zoned with a "W" zone by the Whitefish City Council would cease to exist. "W" zoning within one mile of city limits that was passed by the Whitefish City Council prior to 2005 pursuant to 76-2-310 M.C.A. would not exist. County zones that were adopted by the Flathead County Commissioners in the past that have been amended by the Whitefish City Council to a different county zone or to a "W" zone would revert to the last zoning approved by the Commissioners.

⁶Under Montana law, there are two basic types of zoning that can be adopted in rural areas. Part 1 zoning is referred to as "citizen initiated" zoning. When 60% of the landowners in an area of 40 acres or more petition the county for zoning, the Commissioners may adopt it. Part 1 zoning districts each have a separate "Planning and Zoning Commission," each would have separate regulatory standards, each have a separate levy within the district to pay for administration and enforcement of the zoning district, and are adopted to implement a separate "development pattern" identified for each district. Part 1 zoning is not specifically required to be made in accordance with a Growth Policy. See 76-2-101 et. seq., M.C.A. regarding details of "citizen initiated" Part 1 zoning. Currently, Flathead County only has one Part 1 zoning district in the Egan Slough area and because it has unique and separate regulatory standards and administrative requirements, it is not a part of the Flathead County Zoning Regulations. Part 2 zoning is the second type of zoning under Montana law and it is referred to as "county initiated" zoning. Part 2 zoning may be initiated by the Commissioners for purposes of "promoting the public health, safety, morals, and general welfare" of a jurisdictional area and must be made in accordance with a growth policy or plan. The current Flathead County Zoning Regulations are adopted under Part 2 zoning. See 76-2-201 et. seq., M.C.A. regarding details of "county initiated" Part 2 zoning.

⁷Pursuant to the criteria for adopting Part 2 zoning found in 76-2-203 M.C.A. and Section 2.08.040 of the Flathead County Zoning Regulations, zoning regulations must be made in accordance with the Growth Policy. The 1996 Whitefish City County Master Plan has been adopted as an element of the Flathead County Growth Policy. Therefore, any permanent zoning would have to comply with the 1996 plan and according to the Introduction, the plan is composed of two major components, the text and the map, that must be weighed equally (page 3). Since the 1996 plan was not updated by the county while the interlocal agreement was in place, some of the current zoning that was adopted by Whitefish in accordance with the 2007 Whitefish Growth Policy would not comply and could not be adopted under the current county 1996 plan.

⁸Option 1a-i added after Planning Board discussion at October 16, 2014 public workshop.

